



April 1, 1999

Mr. Scott Fawcett  
Legal Counsel  
Comptroller of Public Accounts  
LBJ Building  
111 E. 17<sup>th</sup> Street  
Austin, Texas 78744-0100

OR99-0894

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123110.

The Comptroller of Public Accounts (the "comptroller") received an open records request for "all available information, including internal Comptroller correspondence regarding the passage of subsection 3.286(b)(2)" of chapter 34 of the Texas Administrative Code. You have submitted to this office as responsive to the request three drafts of proposed changes to 34 T.A.C. § 3.286. You contend these three documents are excepted from required public disclosure pursuant to section 552.111 of the Government Code.<sup>1</sup>

Section 552.111 of the Government Code excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added).

In Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document that is intended for release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document

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<sup>1</sup>We assume the comptroller has released to the requestor all other responsive information.

and as such may be withheld pursuant to the predecessor of section 552.111. The three draft documents before us directly pertain to a policy matter concerning the comptroller. We therefore conclude that the comptroller may withhold these three documents in their entirety pursuant to section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/ch

Ref.: ID# 123110

Enclosures: Submitted documents

cc: Mr. Robert Lochridge  
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2300 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
(w/o enclosures)